

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

APPLETON PAPERS INC. and NCR CORP.,

Plaintiffs,

v.

Case No. 08-C-16

GEORGE A. WHITING PAPER CO., et al.,

Defendants.

ORDER FOR RESPONSE

The parties have filed a joint motion seeking entry of judgment upon this Court's resolution of certain outstanding matters. Although it appears that entry of judgment in the near future could be appropriate, I have one concern that I invite the relevant parties (including the United States) to address. Specifically, a recent trial in the companion enforcement action addressed the question of divisibility of the environmental harm in OU4. If NCR, for example, should be successful in showing that the harm is divisible, it will not be jointly and severally liable for the harm in OU4. If that is true, there is a possibility that such a finding could have a direct impact on one or more of the decisions made in this contribution action.

I have of course not reached any conclusions in the companion action, as the opening briefs have only just been filed. But given the complexity of these issues and their importance, I believe prudence dictates that the potential interplay between the two cases should be addressed prior to entry of judgment in one of them, particularly if an impactful decision in the other is expected in only a matter of months. In short, it would not make much sense to issue a judgment in Case A if

there is a chance that an imminent decision in Case B would undermine or materially change the result in Case A. Accordingly, I invite interested parties to address these issues by submitting letters to the Court by February 13. Parties should set forth their views on these matters and indicate if they believe further briefing may be appropriate.

SO ORDERED this 7th day of February, 2013.

s/ William C. Griesbach

William C. Griesbach, Chief Judge
United States District Court